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Mr. Robert Sedell, Deputy Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Room 246 - Executive Office Building  
Washington, D. C. 20503

Dear Mr. Sedell:

The Environmental Protection Agency's (EPA) Office of Policy and Resource Management (OPRM) and the Office of Water (OW) hereby request an exemption from the review requirements of Executive Order 12291 for NPDES general permits. Section 4(b) of the Order authorizes the Office of Management and Budget (OMB) to exempt any class or category of regulations from any or all requirements of the Executive Order. An exemption under section 4(b) is appropriate in this case because NPDES general permits reduce the burdens of existing regulations for the dischargers they cover. Because general permits are reviewed by EPA headquarters and published in the Federal Register, they also increase agency accountability for regulatory action, insure well-reasoned agency action, and otherwise accord with the purposes of Executive Order 12291.

#### Background

The NPDES general permit program is a regulatory reform initiative and is not specifically authorized by statute. (There is non-binding dicta in case law supporting the use of general permits.) The Clean Water Act provides that the discharge of pollutants is unlawful except in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit. EPA regulations provide for Regional Administrators to issue individual permits to dischargers, based on individual application forms, or to issue a single general permit to a category of point source dischargers located within the same geographic area if the regulated point sources: (1) involve the same or substantially similar types of operations; (2) discharge the same types of wastes; (3) require the same effluent limitations or operating

conditions; (4) require the same or similar monitoring; and (5) in the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits. Devised as a method to reduce paperwork burdens on industry and to streamline permitting procedures, general permits eliminate the time-consuming and resource-intensive process of reviewing and evaluating individual permit applications, and significantly reduce the burdens on dischargers associated with applying for and obtaining individual permits.

#### Why General Permits Should be Exempted

The use of general permits is an important element in EPA's effort to reduce the large backlog of NPDES permit actions and to regulate point source discharges from previously unpermitted facilities. One of our major objectives in requesting this exemption is to shorten the time it takes to issue a general permit. Because the Clean Water Act does not allow a facility to discharge wastewater without a permit, delays in issuing permits can have serious economic effects on the regulated community. For example, oil companies have claimed that delay in issuing permits to offshore oil and gas operations has cost the industry hundreds of thousands of dollars a day because of the need to lease mobile drilling rigs in anticipation of operations. Exempting general permits from the review requirements of the Executive Order would expedite permit processing and make the general permit program more workable.

#### Why Executive Order Review of General Permits is Unnecessary

The substantive similarity between the terms and conditions of general permits and individual permits which are not reviewed by OMB is a major reason for exempting general permits from the Executive Order. Both general and individual NPDES permits contain generic or "boilerplate" permit requirements applicable to all NPDES permits. The NPDES permit regulations that establish these generic requirements and the effluent guidelines regulations that establish limits for specific industrial categories are themselves subject to OMB review under Executive Order 12291 and the Paperwork Reduction Act.

Additionally, both general and individual permits have comparable procedural protections. Like individual permits, draft general permits are subject to public notice, comment and possible public hearings. The only differences are that individual permits require an application and are eligible for evidentiary hearings. Individual applications are not required for general permits because the general permit imposes identical discharge limitations on all similar facilities operating within a defined general permit area.

Evidentiary hearings are not required for general permits because they are considered "rules" under the Administrative Procedure Act and are, thereby, exempt from the Clean Water Act's evidentiary hearing requirement.

It is also important to note that the issuance of general permits is optional on the part of EPA. In the past, only individual permits were issued to specified dischargers after a lengthy application process. General permits were designed to eliminate burdensome paperwork requirements for both the discharger and the permit issuing authority. General permits eliminate the need for complicated individual permit applications and, at the same time, allow the permitting agency to maximize its limited resources by covering a large number of dischargers in one permit proceeding.

Since general permits fulfill the same functions as individual permits without many of the burdensome aspects of individual permit proceedings, we should encourage their use. Unfortunately, the added regulatory review associated with general permits have discouraged many Regions from issuing them. A recent example is Region X's decision to issue individual NPDES permits to 730 placer mining operators instead of submitting a completed final general permit to OMB for review under the Executive Order.

Exemption from OMB review under the Executive Order would restore Regional interest in the general permit program and encourage expanded use of general permits. As a benefit to both the agency and the regulated community, we urge you to exempt NPDES general permits from review under Executive Order 12291.

Sincerely yours,

Original signed by  
**BRUCE R. BARRETT**

**Bruce R. Barrett, Director**  
Office of Water Enforcement and Permit

*C. Ronald Smith*

**C. Ronald Smith, Director**  
Office of Standards and Regulations



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Mr. C. Ronald Smith—  
Director, Office of Standards  
and Regulations (SW-223)  
Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Mr. Smith:

After carefully considering your August 8 request for exempting general NPDES permits from Executive Order 12291 review, OMB has decided to exempt such permits generally from review requirements of Section 3 of the Executive Order. The exemption is conditioned on the understanding that the Director of OMB, at his discretion, may at any time withdraw it or request that a particular general permit be submitted for review. In practice, this means that OMB will, on rare occasions, request to review final permits that raise important general issues. Arrangement should be made to have a copy of every proposed general permit sent for informational purposes to the EPA desk officer not later than the date of its publication in the Federal Register.

This exemption does not apply to clearance of the informational requirements contained in general NPDES permits. To ensure that the provisions of the Paperwork Reduction Act are strictly adhered to, such requirements must be fully and unambiguously covered by the previously approved "generic" informational requirements in the NPDES permit program. Should a general permit contain new information collection requirements, clearance under the Paperwork Reduction Act would be necessary.

Sincerely,

*James B. Bedell, Jr.*  
Robert P. Bedell  
Deputy Administrator  
Office of Information  
and Regulatory Affairs